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Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.50 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session of the General Assembly (continued)

1. The CHAIRMAN invited the Working Group to consider and adopt articles 5, 6 and 7. The proposal that he had submitted on those articles had been endorsed by a number of delegations, although there had also been some divergent opinions thereon, especially with respect to the phrase "taking into account the provisions of articles 5 and 6" in article 7, paragraph 2.

2. Mr. BOCALANDRO (Argentina), Mr. PATRIOTA (Brazil), Mr. CANELAS DE CASTRO (Portugal), Ms. FAHMI (Egypt), Mr. SALINAS (Chile), Ms. FLORES (Mexico), Mr. PREDA (Romania) and Mr. NGUYEN QUY BIHN (Viet Nam) said that the Chairman's proposal was balanced and that they were prepared to accept it in order to facilitate a consensus.

3. Mr. PASTOR RIDRUEJO (Spain), referring to article 5, paragraph 1, said that he disagreed with the underlined words "taking into account the interests of the watercourse States concerned". He was even more dissatisfied with article 7, paragraph 2, which he considered unacceptable because it contained the words "taking into account the provisions of articles 5 and 6". Since those were key provisions that would ultimately determine Spain's position on the convention as a whole, he found the proposed text unacceptable.

4. Mr. GONZALEZ (France), speaking on a point of order, said that he had not received the text of the Chairman's proposal on articles 5, 6 and 7 in an official version in French. If the intention was to discuss the issue informally, he could not accept the text proposed for article 7.

5. Mr. KASME (Syrian Arab Republic) said that he was prepared to accept the proposed text, provided that it was not amended. He reserved the right to state his position on any changes that might be introduced.

6. Mr. BENITEZ SAÉNZ (Uruguay) said that he could support the text proposed by the Chairman, which he viewed as a major effort at compromise. As far as the translation of the document into Spanish was concerned, he would like the term "significant harm" in article 7, paragraph 1, to be rendered as "perjuicio sensible", which was used in current international law by many States, including Uruguay.

7. Mr. ISKIT (Turkey) said that he could not accept the underlined phrase in article 5, paragraph 1. Nor could he accept the decision to delete the word "pedological". Turkey had proposed the inclusion of that word and had yet to be told the reason for its deletion. He could not accept the phrase "taking into account the provisions of articles 5 and 6" in article 7, paragraph 2, because it upset the necessary balance between articles 7 and 5, and felt that the word "all" should be deleted from the phrase "take all appropriate measures". Concerning the words "to mitigate and eliminate", he failed to see how the two actions could be carried out simultaneously and wondered whether it would not be better to replace the word "and" with the word "or". For all the above-mentioned reasons, his delegation could not accept the proposed text. It also agreed with the representative of France that delegations needed to have an official text in order to seek instructions from their Governments.

8. Mr. MANONGI (United Republic of Tanzania) joined in the consensus on articles 6 and 7. However, like the Turkish and other delegations which had referred to that issue, his delegation could not accept the phrase that had been added to article 5.

9. Mr. JAAFAR (Lebanon) reserved the right to comment once he had the official text in Arabic.

10. Mr. HABIYAREMYE (Rwanda) said that he too regretted the way in which the text had been submitted since, without a French version, he could not comment on it.

11. Mr. AMARE (Ethiopia) said that the new wording of the articles under consideration did not meet the minimum standards acceptable. His delegation had submitted a number of amendments aimed at achieving a balance between article 7 and article 5, in support of the Chinese delegation's proposal. The new wording, particularly that in paragraph 2 of article 7, where the words "consistent with" had been replaced by "taking into account", upset the balance between articles 5 and 7. His delegation could not therefore join in the consensus.

12. Mr. SMEJKAL (Czech Republic) said that the proposal was unacceptable because the balance between articles 5 and 7 on the one hand and articles 5 and 6 on the other had been lost; that balance had been the basic assumption underlying the negotiations. Moreover, between the words "mitigate" and "eliminate", the conjunction "or" would be preferable to "and".

13. Mrs. GAO Yanping (China) agreed with the point of order raised by the French delegation. She would be in a position to propose amendments once she had the official Chinese text. Therefore, her comments were only preliminary.

14. The three articles under consideration were the cornerstone of the convention and should reflect a balance between rights and obligations that was absent from the current proposal. The meaning of the underlined phrase in article 5, paragraph 1, was vague, since it was not clear which interests were involved. The amendments proposed by China to article 7 were not reflected in the Chairman's proposal. Moreover, her delegation could not accept the phrase "taking into account the provisions of articles 5 and 6" which had been added to

article 7, paragraph 2. In the penultimate line of paragraph 7, the order of the words "mitigate and eliminate" should be reversed, the conjunction 'and" should be changed to "or" and the word "designed" should be inserted, so that the phrase would read "designed to eliminate or mitigate". Those proposed amendments were not new, since they were based on the original text drafted by the International Law Commission. Since the Chairman's proposal was a compromise text and failed to strike a balance between rights and obligations, her delegation could not accept it.

15. Ms. LADGHAM (Tunisia) said that she was prepared to accept the proposed text, but wished to place on record Tunisia's reservations with respect to the word "significant" in article 7.

16. Mr. DANIELL (South Africa) said that he had difficulty with the underlined words "taking into account the interests of the watercourse States concerned" which had been added to paragraph 5, as well as the words "taking into account the provisions of articles 5 and 6" in article 7, paragraph 2. He suggested that the conjunction "and" between the words "mitigate" and "eliminate" in that paragraph should be replaced by "or".

17. Mr. CAFLISCH (Switzerland) said that he could not accept the proposed text because of the way in which article 7, paragraph 2, was worded. That paragraph was a key provision, if not the key provision, of the future convention and Switzerland's position on the Convention as a whole would hinge on it.

18. Mr. LEE (Republic of Korea) welcomed the Chairman's proposal, which he viewed as a balanced compromise formula that could not be improved upon.

19. Mr. AL-WITRI (Iraq) said that, while he had some reservations about the proposed text, he was prepared to go along with it in order to reach an agreement.

20. Mr. LOIBL (Austria) said that, since articles 5 and 7 were the cornerstones of the convention, it was crucial to have a balanced text. Austria could not join in a consensus on articles 5 and 7 as drafted in the proposal.

21. Mr. WENAWESER (Liechtenstein) said that he could not accept the wording of article 7, paragraph 2, and deeply regretted that the delicate balance achieved in document A/C.6/51/NUW/WG/CRP.72 had not been maintained.

22. Mr. RAO (India) said that the proposal put forward did not meet the minimum requirements for acceptance. With respect to article 5, compromise wording was to be found in the text of the International Law Commission, which provided a balanced solution in many ways. However, adding the words "sustainable utilization" and, further on, "taking into account the interests of the watercourse States concerned", made the implementation and understanding of the article more confusing. Article 5 was therefore totally unacceptable. In the Chairman's proposal, article 7 also departed significantly from the text of the International Law Commission. That article contained many balancing elements which might have been adjusted so as to bear in mind the various points of view. His delegation also believed that the text submitted by Canada and other countries in document A/C.6/51/NUW/WG/CRP.72 constituted a final effort to

reconcile the various points of view. However, the text they proposed for article 7 also upset the balance: the reference to "all ... measures" together with "mitigate and eliminate" implied an unacceptable degree of obligation that was not present in the text of the International Law Commission. His delegation wished to delete the word "all" and change "to mitigate and eliminate" to "to eliminate or mitigate", which would be consistent with the Commission's text. It did not agree with the slight difference in meaning conveyed by changing the words "consistent with" to "taking into account" in article 7. Therefore, it could not endorse the proposal.

23. Mr. LOAYZA (Bolivia) said that it would have been preferable if paragraph 1 of article 5 in the Chairman's proposal did not contain the underlined words. However, the article that was most difficult to accept as drafted was article 7. In that connection, he agreed with the comments of the representative of India on the words "take all appropriate measures" and "taking into account" contained, respectively, in paragraphs 1 and 2 thereof.

24. Mr. VARSO (Slovakia) said that the amendment introduced in paragraph 2 of article 7 changed the meaning, the substance and the balance among articles 5, 6 and 7, which were the most important articles of the Convention. Unfortunately, his delegation could neither endorse nor accept the Chairman's proposal; it should have incorporated the text contained in document A/C.6/51/NUW/WG/CRP.72, in whose preparation many delegations had participated and on which extensive debates had been held in an attempt to find a solution acceptable to all.

25. Mr. LAVALLE (Guatemala) said that his delegation could not accept the proposed text, for the reasons outlined by other delegations, particularly Spain. With reference to article 7, although the text of the International Law Commission was not perfect, his delegation was prepared to accept it as a compromise formula. He also agreed with the view that it was not logical to say "mitigat[ing] and eliminat[ing]" the harm in question. The wording "eliminate or mitigate", which had been accepted from the outset, in other words, that which was contained in the report of the International Law Commission, was more appropriate.

26. Mr. SABEL (Israel) said that he would prefer to see an explicit balance in articles 5 and 7, but was prepared to accept the Chairman's proposal as a compromise solution.

27. Mr. PULVENIS (Venezuela) said that, throughout the negotiations, his delegation had repeatedly stressed the importance of achieving compromise language that would garner, if not the support of all delegations, at least that of the greatest possible number of delegations from the two main interest groups: upper riparian and lower riparian countries. Venezuela had therefore joined Austria, Canada, Portugal and Switzerland in the preparation of document A/C.6/51/NUW/WG/CRP.72. His delegation would have preferred to see the Committee arrive at a text that enjoyed wider support. However, like the delegations of Argentina, Brazil, Mexico and Chile, it was prepared to accept the Chairman's proposal.

28. Ms. ORTAKOVA (The former Yugoslav Republic of Macedonia) said that the proposed text for articles 5, 6 and 7 was very interesting. She had studied

article 7 carefully and found that, despite the fact that, at first glance it seemed that its provisions were of equal importance to all States, it did not specify that many watercourse States had differing points of view and, accordingly, different interests and, more important still, different levels of capacity with respect to the equitable and reasonable utilization of watercourses, particularly with regard to their protection and development. Thus, while the proposed text was very reasonable and interesting, it required further consideration.

29. Mr. NUSSBAUM (Canada) said he had hoped all along that a compromise text for article 7 would be found. He thanked the Chairman for his careful consideration of the text which the Canadian and other delegations had submitted in document A/C.6/51/NUW/WG/CRP.72. His delegation had always shown flexibility with regard to the text of articles 5, 6 and 7, and wished to maintain that attitude; it was therefore prepared to accept the proposed text.

30. Ms. VARGAS DE LOSADA (Colombia) said that she could not accept the Chairman's proposal. Neither the underlined phrase nor the word "sustainable" was acceptable in paragraph 1 of article 5. Her delegation had already had reservations on the proposed text of article 7 in document A/C.6/51/NUW/WG/CRP.72; however, the amendments just introduced to that article made it even more difficult to accept the text.

31. Mr. OBEIDAT (Jordan) said that the text of the articles proposed by the Chairman was a compromise solution and he was therefore prepared to accept it. At the same time, his delegation construed the word "significant" in article 7 within the meaning given in the commentary of the International Law Commission and, therefore, in no way as meaning "important".

32. Mr. DEKKER (Netherlands) said that the proposal was acceptable. Moreover, the objections formulated by other delegations were not very significant; it would therefore make sense to take them into account in the proposed text.

33. Mr. CAMACHO (Ecuador) said that article 7 of the proposed text was unacceptable.

34. Mr. PATRONAS (Greece) said that it was difficult to accept the word "significant" in article 7, but that he was prepared to support the compromise solution proposed, provided that no further changes were made to it. Concerning the addition, in article 5, of the words "taking into account the interests of the watercourse States concerned", it must be borne in mind that the relationship between articles 5, 6 and 7 should mean in practice that significant damage would be legitimatized in most of the cases.

35. Mr. CHIMIMBA (Malawi) said that he was prepared to support the proposed text but that, in an attempt to reach a consensus, perhaps consideration should be given to the possibility of drafting a statement of understanding that explained what was meant by the words "taking into account the interests of the watercourse States concerned" in paragraph 1 of article 5 and perhaps article 7 as well. He was also prepared to accept the word "all", provided that the sentence read "eliminate or mitigate", as proposed by the International Law Commission and also by the representative of India.

36. Mr. HARRIS (United States of America) said that he would be prepared to join the consensus on the Chairman's proposal. Nonetheless, many States had objected to certain elements in it, mainly with respect to paragraph 2 of article 7. Therefore, he would also be willing to continue to seek solutions in order to resolve the differences which had arisen over paragraph 2, which, in fact, seemed relatively minor. He was prepared to accept any of the versions proposed and to remain flexible in order to arrive at a solution acceptable to all parties.

37. Mr. HAMID (Pakistan) said that his reservations focused on the phrase "surface waters and groundwaters" in article 2, subparagraph (a) and the word "significant" in article 7, which he would have been prepared to accept that article if it had been possible to submit disputes to a compulsory process of third-party settlement. As that was not the case, he also had reservations regarding article 33.

38. Mr. MOCHOCHOKO (Lesotho) said that he was open to any changes, but was also prepared to accept the proposed text.

39. Mr. TANZI (Italy) said that the proposed text was fully acceptable, but that he had taken note of the reservations expressed by other delegations and was also willing to continue to seek another solution in a spirit of flexibility and compromise.

40. Mr. PRANDLER (Hungary) stressed that the Chairman's text was truly conciliatory and took into account the interests of various groups. He did not agree with those delegations who found it extremely unbalanced. The Chairman should remind participants that it was a compromise text, especially since many of the downstream States had accepted the term "significant" as used in article 7 and elsewhere. He regretted that some countries were not willing to accept article 7, paragraph 2, especially the words "taking into account", which could replace the phrase "consistent with" used in document A/C.6/51/NUW/WG/CRP.72. He hoped that the different parties would show the political will necessary to reach a consensus.

41. Mr. WELBERTS (Germany) said that he had no difficulty with adopting the text proposed by the Chairman. However, the discussion on those articles would not be concluded at the present meeting, since there were still differences of opinion, especially regarding article 7. He hoped that new negotiations would bring the opposing positions together.

42. Mr. MORSHED (Bangladesh) said that he was able to accept the text submitted by the Chairman and was confident that further discussion would overcome the minor disagreements regarding article 7, paragraph 2.

The meeting was suspended at 11.55 a.m. and resumed at noon.

43. The CHAIRMAN, noting that some delegations had accepted the proposed text on the condition that no changes would be made in it, while others had expressed disagreement with its current drafting, said that the Committee would suspend its consideration of articles 5, 6 and 7, in the hope that further efforts would

reach a compromise solution, and suggested that it should consider the remaining articles.

44. Mr. KASNE (Syrian Arab Republic) said that it would be desirable to strengthen not only article 7, by replacing "consistent with the provisions of" by "taking into account the provisions of articles 5 and 6", but also article 5, by replacing "securing the interests of ..." by "taking into account the interests of watercourse States", in order to restore the balance.

45. The CHAIRMAN took note of the statement of the representative of the Syrian Arab Republic. Document A/C.6/51/NUW/WG/L.3/Add.1 contained the fifth and eighth preambular paragraphs which had not been included in the basic document (L.3); the phrase "and their ecosystems" in brackets had been deleted from the first paragraph. Given that there had been extensive debates during which the preambular paragraphs had been approved ad referendum, he suggested that those paragraphs should be approved as a whole and that those delegations which wished to place on record their reservations or comments could do so in one statement covering all the paragraphs.

46. Mr. GONZALEZ (France) said that he did not see the need for approval ad referendum. It would be unfortunate to have to wait until 6 p.m. to realize that it was not possible to give official approval to the draft convention and that the Working Group had not concluded its work.

47. The CHAIRMAN said that it was not a matter of approval ad referendum, but of final approval of the preamble. Although there was a link with the articles considered previously, it should be possible to approve the preamble.

48. Mr. GONZALEZ (France) said that it would not be possible to adopt the text because it had not been distributed in the official languages and his Government had not been able to form a comprehensive view of a text on which it had serious doubts. Therefore, it must be acknowledged that the Working Group had not concluded its work.

49. The CHAIRMAN took note of the statement of the representative of France.

50. Mr. GONZALEZ (France), clarifying his delegation's position, said that the text in question could not be formally adopted; therefore, it would be necessary either to refer the matter to the Sixth Committee or make a recommendation on the procedure to be followed. Hence, his statement was not intended to record reservations, but to point out that formally, it would be impossible to proceed as the Chairman had suggested.

51. Mr. ISKIT (Turkey) said that he supported the remarks of the representative of France, since proceeding as suggested would not be in conformity with established United Nations practice. Moreover, he did not agree with the suggestion to approve the preambular paragraphs by consensus and place on record the reservations expressed by delegations, since there could be many disagreements regarding certain paragraphs which would prevent their adoption by consensus. Accordingly, he proposed that the paragraphs should be considered one by one, with the possibility of expressing reservations or comments as they were examined.

52. The CHAIRMAN said that, in suggesting that delegations should express their reservations on the various paragraphs in one final statement, he had been indicating a preference, but those delegations wishing to do so could state their reservations on various paragraphs as they felt it appropriate. Furthermore, he understood that important questions were still pending, but, unless the Working Group continued its work, no progress would be made, and he therefore urged delegations to approve the paragraphs already adopted ad referendum.

53. Ms. GAO Yanping (China) said that a procedural matter had been raised that must be considered before moving ahead. The text could not be approved if questions remained. The purpose of the debate was to draft a convention that all countries could accept and which could be fully and effectively implemented.

54. Mr. PASTOR RIDRUEJO (Spain) endorsed the comments of the representative of France.

55. Mr. HABIYAREMYE (Rwanda) supported the statement by the representative of Turkey. He asked what would be done if consensus was not reached on the text, for example, regarding the drafting of the first preambular paragraph. In that respect, his delegation had serious reservations about deleting the word "ecosystems".

56. Mr. GONZALEZ (France) said that a point of order had been raised which must be considered before continuing.

57. The CHAIRMAN said that he was sure that the pending matters could be resolved, and pointed out that the work must be completed that day. All the articles approved ad referendum must be reviewed, and then the convention as a whole must be approved. He hoped that those articles which had received general support would be approved, although naturally, the reservations expressed would be taken into account. He suggested that work on the preamble should continue.

58. Mr. GONZALEZ (France) objected to the Chairman's decision.

59. The CHAIRMAN said that, according to the rules of procedure, it was necessary to take a vote. However, he wished to uphold the Sixth Committee's practice of working on the basis of general agreement. He therefore asked the representative of France whether he insisted on his objection.

60. Mr. GONZALEZ (France) recalled that, in conformity with the final paragraph of the annex to General Assembly resolution 49/52 of 9 December 1994, the Working Group of the Whole should endeavour to adopt all texts by general agreement; failing such an agreement within a reasonable period of time, it should take its decisions in accordance with the rules of procedure of the General Assembly. Considerable doubts remained as to the coherency of the text, which it had not been possible to read through in its entirety, and as to whether it could secure general agreement. The Working Group should therefore acknowledge that it had been unable to complete its work, so that the Sixth Committee could decide what to do next.

61. Mr. TANZI (Italy) invoked rule 113 of the rules of procedure of the General Assembly and requested that the meeting be suspended in order to attempt to reach a consensus on how to proceed.

The meeting was suspended at 12.35 p.m. and resumed at 12.50 p.m.

62. The CHAIRMAN postponed the consideration of articles 5, 6 and 7 and expressed the hope that a compromise would be reached before the afternoon meeting. If there were no objections, he suggested that the preamble should be adopted and that the corresponding reservations should be placed on record.

63. Mr. ISKIT (Turkey) noted that the fifth preambular paragraph still contained the term "sustainable", the adoption of which depended on articles 5 to 7; in other words, that question would remain pending even if the preamble was adopted. Moreover, the text proposed in document A/C.6/51/NUW/WG/L.3/Add.1 made no reference to State sovereignty, a concept which had been provided for in the earlier text of the eighth preambular paragraph (A/C.6/51/NUW/WG/L.1/Rev.1/Add.1) and which was of fundamental importance. His delegation was opposed to adopting the preamble in those circumstances, and that might mean that a vote would have to be taken.

64. Ms. GAO Yanping (China), supported by Mr. SALINAS (Chile), recalled that, when the original text of the eighth preambular paragraph had been discussed, a considerable number of countries had been in favour of retaining it. However, that text did not appear in documents A/C.6/51/NUW/WG/L.3 and Add.1. The question must be resolved before the preamble was adopted.

65. Mr. RAO (India) placed on record his delegation's reservations with regard to the preamble: in the fifth paragraph, the words "[and sustainable]" should be deleted, and the principle of the sovereignty of States under international law should be mentioned in one of the clauses.

66. Mr. HABIYAREMWE (Rwanda) endorsed the statement made by the delegation of China and expressed grave reservations at the deletion of the eighth preambular paragraph.

67. The CHAIRMAN recalled that the proposals by China and Turkey had not secured general agreement when the preamble had been adopted ad referendum, which was why they did not appear in documents A/C.6/51/NUW/WG/L.3 and Add.1. He understood that Turkey could not join in the consensus and wished to have its reservations noted in the record, but he wondered whether Turkey also wished to have its views reflected in a vote.

68. Mr. ISKIT (Turkey) said that his delegation could not join in the consensus, which meant that the preamble could not be adopted by consensus. If the Chairman took that to mean that a vote was necessary, then a vote must be taken.

69. The CHAIRMAN asked whether Turkey could agree that the preamble would be adopted without a vote, with a note in the record to the effect that Turkey would have voted against its adoption if a vote had taken place.

70. Mr. CAFLISCH (Switzerland) regretted that there had not been more of a dialogue on the issue. His delegation shared the reservations that had been expressed, and those reservations would condition its attitude to the preamble as a whole, especially if a vote was taken.

71. Ms. GAO Yanping (China) explained that her delegation had not suggested the original text of the eighth preambular paragraph. During the debate on that paragraph, more than 10 countries, including China, had supported the idea of retaining that paragraph. General agreement had not been reached, but if more than 10 countries were agreed on retaining it and none was vigorously opposed, perhaps it would be possible to reach a general agreement on it and then to adopt the preamble.

72. The CHAIRMAN recalled that the text had been deleted because it had not received sufficient support.

73. Mr. AMARE (Ethiopia) said that his delegation would also be unable to adopt the preamble unless it included a reference to the principle of sovereignty and, in the fifth paragraph, to equitable utilization.

74. Ms. VARGAS DE LOSADA (Colombia) expressed her delegation's reservations at the deletion of the reference to the principle of sovereignty under international law in the eighth paragraph, as proposed by Switzerland.

75. Mr. HARRIS (United States of America) noted that, if the Working Group was to move ahead quickly and discuss articles 5 to 7, it must give the Chairman broad procedural powers. Delegations had had ample opportunity to express their reservations and to discuss the issues. It was time for the Chairman to decide what was the majority position, without taking a vote.

76. Mr. SVIRIDOV (Russian Federation) said he took it that the proposal was to adopt the preamble without a vote, on the understanding that the fate of the words "and sustainable" in the fifth preambular paragraph would depend on the decision taken with regard to article 5. If they were deleted from article 5, they would also be deleted from the fifth preambular paragraph. If the Working Group took that approach he had no objection to adopting the preamble.

77. The CHAIRMAN, having taken note of the reservations expressed, said he took it that the Working Group wished to adopt the preamble without a vote.

78. It was so decided.

The meeting rose at 1.10 p.m.